TERMINATION OF EMPLOYMENT WITHOUT REASON: DETERMINING THE LOCUS OF THE BURDEN OF PROOF

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Abstract

The provisions Section 254C of the Third Alteration Act 2010 and section 7(6) of the National Industrial Court Act 2006 have given the National Industrial Court of Nigeria jurisdiction to abolish the common law rule by which an employer can terminate an employment for good or bad reasons or for no reason at all. Drawing from Article 4 of the ILO Convention No. 158 and Recommendation No. 166 of 1982, the current position of the law is that an employer must state a reason for terminating an employment otherwise the termination will be declared wrongful and unfair. However, what remains to be expatiated upon is the locus of the burden of proving whether there was reason for the termination of an employment. In this connection, it is apposite to juxtapose the general rule that a claimant/employee bears the burden of proof in termination of employment cases with the provisions of Article 9 of the ILO Convention No. 158 which expressly imposes the burden of proof in such cases on the employer to show that a reason was given for the termination of the employment. The purpose of this article is to appraise the provisions of Article 9 of the ILO Convention on the burden of proof in the light of the common law rule. The researchers find inter alia that the NICN, having relied on Article 4 of the ILO Convention to develop the practice of requiring employers to give reason for terminating an employment, can and should also give force to Article 9 of the said Convention. The researchers however find that the application of Article 9 of the ILO Convention is challenged by a number of factors, the chief of which is the common law attitude of the appellate courts. In its final analysis, the researchers called for more activism on the part of the NICN judges. There is the need to organize a workshop where the learned justices of the appeal courts will be acquainted with the recent trends in our labour jurisprudence and the need to uphold the application of the provisions of Article 9 of ILO Convention on burden of proof.

Keywords: Termination of Employment, Burden of Proof, ILO Convention, National Industrial Court of Nigeria.

1. Introduction

The purpose of this paper is to briefly dissertate on the appropriate *locus* of the burden of proof in cases bordering on termination of employment without reason. This is based on the background that under the ILO Convention No. 158 and Recommendation No. 166,[1] the employer is not only required to give valid reasons for terminating an employment but also to prove the fact that it gave a reason for the termination. The significance of this research work is based on the importance of a correct identification or allocation of the burden of proof because if a trial court misdirects itself as to who bears the burden of proof, it is most likely that the court will arrive at a perverse decision which will be overturned upon appeal.[2]

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[1] See C158 – Termination of Employment Convention, 1982 (No. 158) and R166 - Termination of Employment Recommendation No. 166 adopted in Geneva at 68th ILC Session on 22nd June 1982

[2] *Duru v. Nwosu* (1989) 4 NWLR (Pt. 113) 24 (at pg. 42, para. F)

2. Burden of Proof in Termination of Employment Cases

Generally, based on the provisions of the Evidence Act[3] and judicial authorities, the position of the law in civil cases is that it is the party who initiates a suit (that is, the claimant) who bears the general burden of proving his case. However, the burden is not static as in criminal cases, so that as the case progresses, the burden may shift to the defendant to call evidence in proof or rebuttal of some material particular point which may arise in the case. Labour law is a branch of substantive civil law. Therefore, the general principles governing burden of proof in civil cases apply *ipso facto* to employment cases. With respect to termination of employment, the law is trite that the onus of proving wrongful termination of employment lies on the employee who seeks the court to declare that his employment was wrongfully terminated.[4] In the case of *N.R.W. Ind. Ltd v. Akingbulugbe*,[5] the Court of Appeal held that an employee who seeks a declaration that the termination of his employment was wrongful must prove (a) that he is an employee of the defendant; (b) the terms and conditions of his employment; (c) the way and manner and by whom he can be removed; (d) the way and manner in which the terms and conditions of his employment were breached by his employer. This has been the position of the law as the principle was also recognized by the NICN in the case of *Mr. Lawal Gambo v. F.I.R.S.*[6]

However, the question to ask is whether the burden is static or may shift from the employee to the employer as the case progresses. In the case of *N.R.W. Ind. Ltd v. Akingbulugbe*,[7] the respondent/employee was employed by the appellant/company as a general manager. He was later promoted to the rank of acting managing director. By his letter of employment, the employer could terminate the contract by giving 3 months' notice or paying 3 months' salary in lieu of notice. After his promotion, the respondent was queried by the appellant and subsequently given a sack letter. The respondent approached the trial court seeking for a declaration that his employment was wrongfully terminated. The respondent's case was that the employer did not comply with the procedure laid down in his letter of employment and that he was sacked without any reason or fair hearing. He testified for himself and tendered his letter of employment and the notice of termination. The appellant/employer did not call any evidence but relied on the evidence of the respondent. The learned trial judge found for the employee and awarded damages against the employer.

Dissatisfied with the decision, the appellant/company appealed. One of the issues considered at the Court of Appeal was the effect of failure of the appellant to call any evidence at all and whether the employee, having made a *prima facie* case against the employer, the burden of proof has shifted to the employer. The respondent submitted that since he showed by his employment letter that the employer was required to give him 3 months' notice or salary in lieu before terminating the employment, and since his case is that the employer did not comply with the requirement, the burden of proof shifted to the employer to prove that it complied with the

[3]Section 133 and 136 of the Evidence Act, 2011; *Union Bank v. Ravih Abdul & Co Ltd (2008) LPELR-46333 (SC) at page 35*.
[4] See *Famakinswa v. T.A Nig. PCC* (2007) WRN (Vol. 18) 36 at 40-49
[5] (2011) 11 NWLR (Pt. 1257) 131. See also the cases of *Afribank Nig. Plc v. Osisanya* (2000) 1 NWLR (Pt. 642) 592; *Adams v. LSPDC* (2000) 5 NWLR (Pt. 656) 291; *Kabel Metal Nig. Plc v. Ativie* (2002) 10 NWLR (Pt. 775) 250
[6] Unreported Suit No: NICN/ABJ/341/2012, the judgement of which was delivered by hon. Justice P. O. Lifu on the 5th November, 2014.
[7]*Supra*

requirement. In rejecting this submission, the Court of Appeal held that the burden of proof was on the respondent and remained on him throughout the case.[8] The Court relied on a provision in the Notice of Termination which stated that the respondent would be paid his 3 months' salary in lieu of notice to hold that the respondent was actually given the three months' salary in lieu of notice since he did no lay evidence to the contrary.

It is submitted that the decision of the Court of Appeal was, with due respect, given *per incuriam* for a number of reasons. Firstly, the Court apparently attached to a mere representation in the Notice of Termination, the probative weight of a receipt by holding that the provision which stated that the respondent would be paid his 3 months' salary in lieu of notice was sufficient proof that he was paid same. This is rather strange because it implies that, where an employer is required to comply with a particular procedure in terminating the employment and the employee is challenging such compliance, the employer would be absolved from liability once the letter of termination states that such procedure has been or will be complied with. We make bold to submit that the appellant/company had the onus of tendering evidence to show that the employee was in fact paid his salary in lieu of notice at the time his employment was ended. Our position is accentuated by the decision of the Supreme Court in *Chukwumah v. Shell*,[9] where the apex court held that for a termination of employment *via* payment *in lieu* of notice to be effective, the payment must be made contemporaneously with the notice of termination and that it is not enough that in the letter of termination of employment the employer offers to pay the salary in lieu of notice.

Secondly, the Court reasoned *per incuriam* when it held that the burden of proof in cases of wrongful termination of employment remains static on the employee and does not shift to the employer. Section 136 of Evidence Act contemplates the shifting of the burden of proof in appropriate case whilst section 133 (2) recognizes that the burden of proof in civil cases is not static but shifts to the defendant once the claimant has adduced reasonable evidence in support of his case. Moreover, the Supreme Court in the case of *Chiadi v. Aggo*[10] held that in civil cases, facts are proved on the preponderance of evidence and that where there is nothing on the other side of the balance, the onus of proof is discharged on minimal proof. With due respect, we submit that the decision of the Court of Appeal in *Akingbulugbe's case* places an onerous burden on the employee and apparently encourages complacency on the part of the employer. Happily, in the case of *Momoh Faruk v. Daar Communication Plc,*[11]where the *NICN* was faced with similar facts as in *Akingbulugbe's case,* our thinking on this issue was shown to be sound. The claimant/employee's claim in this case was that in line with his letter of employment, he was entitled to notice or salary in lieu of notice and that the defendant/company had terminated his employment without giving him any notice or salary in lieu. In holding that the defendant/company had failed to discharge the burden of controverting the claimant's claim, the NICN stated as follows:

> It is not right and proper for a claimant who says in his pleadings and evidence that he has not been paid salaries to go ahead and prove that he has not been paid.

[8] *Supra* (per Iyizoba J.C.A at page 148, paras F-G)
[9] (1993) LPELR-864 SC at 28
[10] (2018) 2 NWLR (Pt. 1603) 175 at 211/222
[11] Unreported Suit No: NICN/ABJ/36/2013, the judgement was delivered by Hon Justice P. O. Lifu on 13th of October 2014

> This is what the defence wants the claimant to do. To me this is very strange to our justice delivery principles and practices. All what a claimant needs to do in that case is to raise a *prima facie* case that he has not been paid salaries; then the burden shift and moves to the defendant to prove that in fact he was paid.[12]

The above decision of the NICN is commendable and more plausible as it underscores the fact that the employee's burden of proof in employment cases is not static and that in appropriate circumstances, the onus will shift to the defendant/employer to prove or rebut some facts.

3. Burden of Proof when Employment is Terminated Without Reason: The Common Law Position

Until recently, the position of the law in Nigeria has been that the employer can terminate the employment of an employee for any or no reason at all provided all benefits due to the employee are paid. The common law principle which is known as the "right to hire and fire at will" has been expatiated upon and affirmed in a plethora of Nigerian cases to the effect that the employer has an unfettered right to terminate the employee's employment for good or bad reason or for no reason at all and that the motive for exercising the right does not render the exercise ineffective.[13] The position stood on the notion that no servant can be foisted upon an unwilling master, even where the master's behaviour is wrong and that the same rule had always benefitted an unwilling servant who wishes to back out from the employment at any time with or without any reason. However, where in the conditions of service, it is expressly provided that a reason should be given as part of the procedure for the termination of the contract,[14] or where the employer went ahead to state a particular reason for the termination of the employment, the burden lies with the employer to establish that reason.[15]

3.1 The NICN Abolition of the Common Law Position on Termination without Reason

The common law principle of "right to hire and fire at will without any reason" worked hardship for employees as it handed employers a field day in abusing employment relationships with little or no sense of rationality. The practice also runs contrary to international best labour practice and has been discouraged by the international labour organization.[16] Specifically, Article 4 of the ILO Termination of Employment Convention (No 158) provides that the employment of a worker shall not be terminated unless there is a valid reason connected with the capacity or conduct of the worker, based on the operational requirements of the undertaking or service.[17] The Convention further invalidates certain grounds for termination such as union membership or participation in union activities at appropriate hours, seeking office or acting as a workers' representative, filing a complaint or participation in proceedings against an employer for violations of laws or regulations, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, absence from work

[12] *Supra* (Per P. O. Lifu at page 5)
[13] See *Dudusola v. Gas Co. Ltd.* (2013) 10 NWLR (Pt. 1363) 423; *Ativie v. Kabelmetal Nig. Ltd* (2008) 10 NWLR (Pt. 1095) 399; *Olanrewaju v. Afribank Nig. Plc* (2001) 13 NWLR (Pt. 731) 691; *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) 599; *Obe v. Nigersol Construction Company Ltd* (1972) 2 U.I.LR. (Pt. 11) 121
[14] See *N.R.W. Ind. Ltd v. Akingbulugbe* (supra at page 153*)*
[15] See *U.B.A Plc v. Oranuba* (2014) 2 NWLR (Pt. 1390) 1 at 21
[16] See C158 – Termination of Employment Convention, 1982 (No. 158) and R166 - Termination of Employment Recommendation No. 166 adopted in Geneva at 68th ILC Session on 22nd June 1982
[17] See also Articles 5 – 13 of the ILO Termination of Employment Recommendation No. 166

during maternity leave and temporary absence from work because of injury or illness.[18] Interestingly, the NICN has in a plethora of cases applied the above provisions to hold that it is no longer fashionable to terminate an employment without stating any reason.[19] The leading cases are *Aloysius v. Diamond Bank*[20]and *Duru v. Skye Bank Nigeria Plc*[21] where the NICN held that the termination of employment without stating reasons is contrary to international best practices and labour standards. Such bold reliance on international law by the NICN was made possible by the Third Alteration Act.[22]

These decisions of the NICN abolished the common law principle and introduced a new dispensation where employers are required to state reasons when terminating the employment of their workers. In *Valentine v UBN Plc,*[23] the NICN relying on its decision in *Aloysius v Diamond Bank*, awarded substantial damages far beyond payment of salary in lieu of notice in favour of the employee, having found that the employment was terminated without reason. In the recent case of *Bello Ibrahim v. ECO Bank Plc,*[24] the NICN held that the termination of the claimant's employment without any reason was wrongful and unfair and further ordered the reinstatement of the claimant/employee. Without much ado, the application of the ILO Convention No. 158 and Recommendation No. 166 as seen in the above cases is a welcome development in our labour jurisprudence. However, as the NICN rightly pointed out in the case of *Kikelomo Kola-Fasanu v. Prestige Assurance Plc,*[25] an employee who wishes to benefit from the ILO Convention No. 158 must make a case for its application in his pleadings. Yet, whether such an employee pleaded the Convention or not is no bar for the application of the convention as an evidence of international best for practice.[26]

3.2 Burden of Proof in Termination of Employment without Reason:

From the above discourse, it is now clear that an employer must give reason(s) for terminating the employment of an employee. Where the employer terminates an employment without stating any reason, the employee is entitled to sue the employer for wrongful termination of the employment. The question now is, in such cases, which between the employer and the employee should bear the burden of proving the existence or non-existence of a reason for the termination. Generally, as we have seen from the cases earlier on discussed, the position of the common law

[18] Articles 5 and 6 thereof

[19] The case of *Momoh v. Daar Communication Plc* (*Supra*) decided in 2014 appears to be one of the earliest decisions on this point where the NICN per Hon Justice P. O. Lifu observed that it was no longer fashionable under our labour regime for an employer to terminate an employment without reasons.

[20] (2015) 59 NLLR (Pt. 119) 92 at 105

[21] (2015) 59 NLLR (Pt. 59) at 724

[22] The Third Alteration Act (2010) to the Constitution of the Federal Republic of Nigeria 1999 in Section 245A-F, established the National Industrial Court as a court of superior record to adjudicate on all labour and employment related issues. Section 254C(1) empowered the NICN to hear and determine cases (f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters; (h) relating to, connected with or pertaining to the application or interpretation of international labour standards.

[23] Unreported Suit No: NICN/LA/122/2014, the judgment of which was delivered on 12th July, 2016

[24] Unreported Suit No: NICN/ABJ/144/2018, the judgment of which was delivered by Hon. Justice Sanusi Kado on the 17th of December, 2019

[25] Unreported Suit No: NICN/LA/25/2016, the judgment of which was delivered by Hon. Justice B. B. Kanyip on the 25th April 2018

[26] Section 7 (6) of the National Industrial Court Act of 2006 provides that the NICN shall '…have due regard to good or international best practices in labour or industrial relations and what amounts to good or international best practices …shall be a question of fact.'

is that the claimant/employee who alleges wrongful termination of employment has the burden of proving how the employment was wrongfully terminated. However, it is submitted that in relation to termination of employment without reason, the burden of proof rests on the employer to establish that a reason was given for the termination. This is buttressed by the provisions of Article 9 (2) of the ILO Convention No. 158 which provides as follows:

> In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:
>
> (a) The burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;
>
> (b) The bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

When the above provision is read in conjunction with Articles 1 and 8 of the ILO Convention No. 158, it means that even in the absence of collective agreements or statutory provisions to that effect, the NICN can by its decisions, lay down the rule that the burden of proving the existence of a valid reason for the termination of an employment rests on the employer. This is without prejudice to the fact that the NICN reserves the power to make a finding of fact in this connection having regard to the evidence adduced by the parties. Therefore, where a case of wrongful termination of employment is based on absence of reason, the burden of proof is on the defendant/employer, and not the claimant/employee, to establish that a valid reason was given for the termination of the employment. All that the employee needs to do is to state in his pleadings that no reason was given for his removal and to tender the letter with which his employment was terminated. This reasoning was adopted by the NICN in *Momoh Faruk v. Daar Communication Plc,*[27]where the NICN held that once the employee makes a *prima facie* case that his salary in lieu of notice was not paid, the burden was on the employer to show that payment was in fact made. It is submitted that this logic applies also to termination of employment without reason. Simply put therefore, once the employee pleads that his employment was terminated without reason, the onus is on the employer to controvert the claim by adducing evidence to show that a reason was given for the termination and that the version was valid.

Article 9 of ILO 158, there is sufficient basis for placing the burden of proof on the employer in cases of termination of employment without reason. Firstly, as noted earlier, our law contemplates that the burden of proof on the claimant in civil cases is not static so that where the defendant wishes the court to believe in the existence of a particular fact, he shall bear the burden of proving that fact.[28] Secondly, is the Latin maxim *incumbit probation qui dicit non qui negat* – the burden of proving a fact rests on the party who asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof. This maxim has been applied in a number of Nigerian cases.[29] In *Amadi v. Amadi,*[30] the plaintiffs/respondents made a

[27]*Supra*
[28] See section 133 (2) and 136 of the Evidence Act
[29]See *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 at 272-273; *Fashanu v. Adekoya* (1974) 6 SC 83
[30] (2017) 7 NWLR (Pt. 1563) 108

negative assertion in his pleadings that their late father left no (valid) will. The defendants/appellants pleaded *per contra* to the positive effect that there was a (valid) will. In holding that the burden of proof rests squarely on the defendants/appellants who asserted the positive, the Supreme Court held:

> The burden of proof in this sense rests upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issue. It is an ancient rule founded on consideration of good sense and it should not be departed from without strong reasons. It is fixed at the beginning of the trial by the state of the pleadings … and never shifting in any circumstances.[31]

It is submitted that this logic applies also to termination of employment cases where the employer makes a positive or affirmative assertion that the employment was terminated with reason contrary to the employee's negative assertion that no reason was given for the termination. This is because, unlike positive assertions, negative assertions are usually incapable of proof. Furthermore, it has since been a trite rule that the employer squarely bears the onus of establishing the reason for termination of an employment where such reason was given. It is strange to foist on the employee the burden of showing the reason (if any) for the termination of his employment on the one hand, and then requiring the employer on the other hand to establish that reason. It accords more with common sense for the employer (and not the employee) to bear the burden of showing the reason for the termination and then to establish that the reason is valid and in line with international best practice in labour.

3.3 Challenges to Placing the Burden of Proving Reason for Termination on the Employer

Although, as has been shown above, the rule is that the employer is the appropriate party to bear the burden of proof in cases of termination of employment without reason, there are some bottlenecks that may hinder the application of the rule. These factors are briefly highlighted below:

(i) Non-Domestication of the ILO Convention 158 and Recommendation No. 166: Section 12 (1) of the Constitution forbids the application of Treaties (including ILO Conventions and Recommendations) except they have been enacted into law by the National Assembly, a process referred to as 'domestication.' Unfortunately, there has not been any express domestication of these Conventions in Nigeria to date. This bottleneck, however, no longer holds water in view of section 7 (6) of the NIC Act, section 254C (1) (f) and (h) and more specifically section 254C (2) of the Constitution of the Federal Republic of Nigeria (Third Alteration Act) 2010, by virtue of which the NICN is ably imbued with the jurisdiction and power, notwithstanding other provisions of the constitution (including section 12), to apply any international convention, treaty or protocol relating to labour, employment, etc which Nigeria has ratified.[32] With this development, the NICN has been able to apply the provisions of Article 4 of the ILO Convention No. 158 and Recommendation No. 166.

(ii) Attitude of the Appellate Courts: It is unfortunate to note that some of the judges of the Court of Appeal still hold fast to the old dispensation and its common law rules. For instance, in

[31] Per Nweze J.S.C. at page 133, paras B-D
[32] *Aero Contractors Company Nig. Ltd v. NAAPE* (Unreported Suit No: NICN/LA/120/2013)

Akingbulugbe's case,[33]the Court of Appeal maintained the common law rule that an employer can sack an employee with or without reason. The judgment was given in December 2010, that is, a few months after the passage of the Third Alteration Act 2010 which expressly allowed the Industrial Court to apply international Conventions and best practices in its adjudication. Worst still, in the more recent case of *Obanye v. U.B.N. Plc,*[34] in which the Supreme Court strangely, saw nothing wrong with terminating an employment without reason or for a bad reason, despite recent developments in our labour jurisprudence. Another interesting case is *Kwara State Judicial Service Commission v. Tolani*,[35] where the Court of Appeal made reference to some international treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women, the Optional Protocol to the Convention on Elimination of Discrimination, Vienna Declaration of 1993, etc., in faulting the termination of the respondent's employment on grounds of alleged false declaration of marital status.[36] This decision was appealed against to the Supreme Court, one of the grounds of appeal being that the lower court erred when it referred to those international treaties in arriving at its decision. The Supreme Court refused to reverse the decision of the lower court based the appellant's argument, but the ground for the apex court's refusal is worrisome. Instead of totally discountenancing the appellant's argument, the apex court held that the mistake of the lower court in referring to those treaties was not fatal and that provided the judgement was correct, the wrong channel or route through which that decision was reached would not scuttle the said decision. This implies that the apex perceived the lower court's reference to international treaties as wrong even though it agreed with its decision that termination of the respondent's employment on grounds of marital status was wrong and unfair.

This common law attitude of the appellate courts is with utmost respect, wrong in view of new dispensation as occasioned by the Third Alteration Act, 2010. We submit that the amendment of the Constitution as reflected in section 254C goes beyond establishing the exclusive jurisdiction of the NICN over labour matters in Nigeria to laying the foundation for a total departure from stringent common law labour practices.[37]

(iii)Approach of the Courts to Declaratory Reliefs: Where an employee seeks a declaration of the court to the effect that his employment was wrongfully terminated, his case comes under the category of declaratory reliefs. The attitude of the courts to declaratory reliefs is that the claimant bears the burden of establishing such relief on the balance of probabilities and must not rely on the admission or weakness of the defendant's case.[38] In this connection, the duty of the claimant/employee to establish his case is not totally abdicated to the defendant/employer. However, labour disputes are now special dispute with unique rules and procedures. Labour dispute can as well be an exception to the general rule that declaratory reliefs are not granted upon default or admission.

[33]*Supra*
[34](2018) 17 NWLR (Pt. 1648) 375 at 389, paras F-G
[35] (2019) 1-2 SC (Pt. II) 116 at page 136, paras 25-30
[36] See (2009) LPELR-CA/IL/2/2008 at page 54-57, paras F-D for the Court of Appeal's Judgment
[37]See for instance section 13 and 15 of the NIC Act of 2006
[38] See *Okereke v. Umahi* (2016) 11 NWLR (Pt. 1524) 438; *Addah v. Ubandawaki* (2015) 7 NWLR (Pt. 1458) 325 at 212

(iv) Failure to Plead the ILO Convention: Notwithstanding the various beneficial provisions of the ILO Convention No. 158 and Recommendation No. 166, it appears that an employee who fails to plead them cannot be allowed to benefit from them. In *Kikelomo Kola-Fasanu v. Prestige Assurance Plc,*[39] the NICN rejected the claimant/employee's argument that no reason was given for the termination of his employment because the claimant failed to make a case for the application of the ILO Convention No. 158 in his pleadings.

(v) Power of the NICN to Draw Inference: In as much as Article 9(2)(a) of the ILO Convention No.158 contemplates allocating the burden of proof to the employer in cases of termination of employment without reason, a cursory look at said Article also permits the court to draw inferences as to what the reason for the termination is, in which case the court may dispense with holding the defendant/employer liable to proving that fact. In the case of *Mr. Lawal Gambo v. F.I.R.S,*[40]claimant's employment was terminated and the letter of termination did not state any specific reason for the termination. Invoking the provisions of section 167 of the Evidence Act (on the power of courts to presume certain facts), the NICN looked beyond the letter of termination to other documents before it and found that the employment was terminated based on an allegation of presentation fake certificate to the defendant.Similarly, the court can decide a case based on the pleadings of the parties without evidence being called.[41] Therefore, as happened in the case of *Gbenga v. Power Holding Company of Nigeria*,[42] where a fact can be found by looking at the pleadings of the parties, the mere fact that the defendant/employer did not call any evidence in support of his case does not mean that the defendant has failed to discharge the burden that was placed on him.

4. Conclusion and Recommendations

Since the coming into force of the Third Alteration Act, the NICN has become a safe haven for helpless employees due to its fearless and ingenious decisions. The NICN has taken advantage of its wide jurisdiction under the constitution to abolish the common law rule that allows an employer to terminate the employment of his staff without any reason whatsoever. The new position of the law to the effect that employers must give reason for the termination of an employment is hinged on Article 4 of the ILO Convention No. 158 and Recommendation No. 166 which the NICN has the power to enforce. The researchers submit that in line with Article 9 of the Convention, placing the burden of proof on the employer accords more with common sense and existing principles. The writers however identify some bottlenecks that may hinder a new development in this regard. The attitude of the appeal court is chief among these challenges. Apart from the need for activism on the part of the NICN judges, it is recommended that the learned justices of the appeal courts should be acquainted with the new labour dispensation where common law principles no longer hold sway. In this connection, there is need for a continuous workshop and meetings between judges of the NICN and the appeal courts where key issues relating to the new trends in labour law are dissected and appreciated. Going forward, it is hoped that the practice will not only be that the employer cannot terminate an employment without reason but that the employer bears the burden of proof in such cases.

[39] *Supra*
[40] *Supra*
[41] *ACB v. Obmiami Brick & Stone* (1993) 5 NWLR (Pt. 294) 399 at 415
[42] Unreported Suit No. NICN/ABJ/95/2012, the judgment of which delivered by Hon. Justice O. A. Shogbola on the 16th of March, 2015